

## SECOND CLAIM FOR RELIEF

### CLEAN WATER ACT VIOLATIONS

85. The allegations in paragraphs 1-9 and 70-84 are repeated herein by reference.

#### THE CANTON FACILITY

86. Ashland's Canton Facility Outfall 001 is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

#### *Non-Permit Related Oil Pollution Act Claim*

87. On or about June 7, 1995, a 4-inch riser at the Ashland Canton facility was inadvertently broken off of a 12-inch crude oil pipeline resulting in the discharge of approximately 726 barrels of crude oil into the Tuscarawas River and adjoining shoreline.

88. Ashland violated Section 311 of the CWA by discharging crude oil in an amount that caused a film or sheen upon and discoloration of the Tuscarawas River. 33 U.S.C. § 1321.

*Unauthorized sheens or foams on wastewater discharges*

89. Part III, paragraph 2B of the Ohio Permit requires that "[t]he effluent shall at all times, be free of substances of an oily, greasy, or surface-active nature, and of other floating debris, in amounts that will form noticeable accumulation of scum, foam or sheen." Additionally Part III, paragraph 11A provides that "[b]ypassing or diverting of wastewater from the treatment works is prohibited...."

90. Since 1990 to the present, Ashland has on at least six

occasions violated the Ohio Permit requirements, Section 301 of the CWA, 33 U.S.C. § 1311, and 40 C.F.R. Parts 110 (Discharge of Oil) and 122 (EPA Administered Permit Programs: The National Pollution Elimination Discharge System), when spills of oil, untreated wastewater, and other pollutants not specifically authorized by the Ohio Permit, were discharged into waters of the United States. Some of the discharges caused an oil sheen in the receiving waters of the United States. These discharges are also violations of Section 311 of the CWA, 33 U.S.C. § 1321.

#### *Effluent limit violations*

91. The Ohio Permit, Part 1A, established numerical loading and concentration limitations governing daily maximum and 30-day average amounts for the following parameters, among others, at Outfall 001: biochemical oxygen demand ("BOD"), total suspended solids, oil and grease, pH, chemical oxygen demand, ammonia, sulfide, total phenolic, selenium, hexavalent chromium, total chromium, and total zinc. Acute and chronic toxicity limits are also established in the Ohio Permit.

92. The Ohio Permit required Ashland to monitor its discharges of pollutants in order to determine compliance with the effluent limitations established in the Ohio Permit, and to submit to OEPA on a monthly basis discharge monitoring reports ("DMRs") containing the results of the effluent monitoring.

93. Pursuant to the requirements of the Ohio Permit, Ashland submitted the DMRs to OEPA.

94. Review of the DMRs for the period of July 1993 to July 1996 discovered numerous violations of effluent limitations of

the Ohio Permit for toxicity, phenol, BOD, and NH3. Each day of Ashland's discharge of each pollutant in excess of the effluent limitations authorized in the Ohio Permit constitutes a separate day of violation of the Ohio Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### THE CATLETTSBURG FACILITY

##### *Effluent limit violations*

95. Part I.A. of the Kentucky Permit established numerical loading and concentration limitations governing daily maximum and 30-day average amounts for the following parameters, and others, at specified outfalls: biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), oil and grease, zinc, cyanide, phenol, chloride, and hexavalent chromium. The Kentucky Permit also establishes limits on fecal coliform, acute toxicity, and temperature.

96. The Kentucky Permit required Ashland to monitor its discharges of pollutants in order to determine compliance with the effluent limitations established in the Permit, and to submit to KYDEP on a monthly basis discharge monitoring reports ("DMRs") containing the results of the effluent monitoring.

97. Pursuant to the requirements of the Kentucky Permit, Ashland submitted the DMRs to KYDEP.

98. Review of the DMRs for the period of January 1994 to September 1996 discovered approximately 115 incidents of effluent limitation exceedances of the Kentucky Permit for the parameters set forth above. Each day of Ashland's discharge of each pollutant in excess of the effluent limitations authorized in the

Kentucky Permit constitutes a separate day of violation of the Permit, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 40 C.F.R. § 122.41(a).

*Failure to Report Monitoring Results*

99. The Kentucky Permit required Ashland to monitor its discharges of pollutants in order to determine compliance with the effluent limitations established in the Permit, and to submit to KYDEP on a monthly basis DMRs containing the results of the effluent monitoring.

100. Ashland failed to conduct and report the required monitoring for pH, temperature, oil and grease, total organic carbon ("TOC"), chloride, and zinc at Outfall 006 during the month of December 1995. Additionally, Ashland failed to conduct and report the required monitoring for total suspended solids ("TSS") and TOC at Outfall 023 during June 1994. Ashland, further failed to conduct and report the required monitoring for TSS at Outfall 007 for May 1994.

*Failure to Properly Operate and Maintain*

*Wastewater Treatment System*

101. Part II of the Kentucky Permit provides that all KPDES permit conditions in KPDES Regulation 401 KAR 5:065, Section I will apply to all discharges authorized by this permit. 401 KAR 5:065 Section 1(5) requires permittees to properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of the permit.

102. Ashland operated a wastewater treatment plant at the Catlettsburg facility.

103. The following actions and omissions constitute failures by Ashland to properly operate or maintain the Catlettsburg wastewater treatment plant in violation of the Kentucky Permit, Kentucky regulation, the CWA, and 40 C.F.R. § 122.41(a) and (e):

(A) Insufficient internal monitoring has prevented Ashland from identifying and preventing upset conditions at the wastewater treatment plant which have lead to previous permit violations;

(B) Ashland's three oil-water separators, which are part of the wastewater treatment plant, do not have functional chain and flight oil and sludge moving devices;

(C) Acid feed pumps at the wastewater treatment plant have not been operable;

(D) Turbulence at the Parshall flume in Outfall 001 has prevented Ashland from calculating accurate flow data, and:

(E) Procedures and pH adjustment equipment are inadequate to insure compliance with pH permit conditions for Outfall 006.

*Prohibited bypass*

104. Kentucky regulation 401 KAR 5:065 Section 1(13)(a)(1), defines "bypass" as "the intentional diversion of waste streams from any portion of a treatment facility." Kentucky regulation 401 KAR 5:065 Section 1(13)(d), prohibits bypass unless: it is unavoidable to prevent loss of life, personal injury or severe property damage; there were no feasible alternatives; and the

permittee provides proper notification to the state.

105. Since 1993, Ashland has diverted oily wastewater from the methyl tertiary butyl ether and Hydrogen Fluoride Alky units' surge tanks around the oil-water separators. Because the conditions for exception from the bypass prohibition were not met and neither Kentucky nor EPA were notified of the bypass, this bypass was in violation of the Kentucky Permit, Kentucky regulation, the CWA, and 40 C.F.R. § 122.41(m)(4).

#### *Non-Permit Related Oil Pollution Act Claims*

106. On fifteen occasions between January 1994 to June 1996, Ashland unlawfully discharged oil into navigable waters of the United States, in violation of Sections 301 and 311 of the CWA, 42 U.S.C. §§ 1311 and 1321, and 40 C.F.R. § 110.9.

#### *Permit Application and Special NPDES Program Requirements*

107. Subpart B of 40 C.F.R. Part 122 provides that if an effluent guideline promulgated under Section 304 of the CWA, 33 U.S.C. § 1314, applies to a facility applying for an NPDES permit, the applicant must provide its actual production capacity of the facility. 40 C.F.R. § 122.21(g)(5).

108. In its NPDES application for the Catlettsburg facility, Ashland provided estimates of its production in violation of 40 C.F.R. § 122.21(g)(5).

#### *THE ST. PAUL PARK FACILITY*

109. Outfalls 010 and 020 located at the St. Paul Park facility are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

#### *Effluent limit violations*

110. The Minnesota Permit established numerical loading and concentration limitations governing daily maximum and 30-day average amounts for the following parameters, among others, at Outfalls 010 and 020: biochemical oxygen demand, total suspended solids, ammonia, chemical oxygen demand, oil and grease, pH, phenolic compounds, sulfide, mercury, and total zinc. Acute toxicity limits are also established in the Minnesota Permit.

111. The Minnesota Permit required Ashland to monitor its discharges of pollutants in order to determine compliance with the effluent limitations established in the Permit, and to submit to MPCA on a monthly basis discharge monitoring reports ("DMRs") containing the results of the effluent monitoring.

112. Pursuant to the requirements of the Minnesota Permit, Ashland submitted the DMRs to MPCA.

113. Review of the DMRs for the period of September 1993 to August 1996 discovered 31 violations of effluent limitations of the Minnesota Permit.

114. Ashland failed to report concentration averages for hexavalent chromium (March 1995) and selenium (September and October 1995) and failed to report flow minimum (January 1992 - October 1993, March - May 1995 and July 1995).

115. Each day of Ashland's discharge of each pollutant in excess of the effluent limitations authorized in the Minnesota Permit constitutes a separate day of violation of the Minnesota Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

*Unauthorized discharges into waters of the United States*

116. Section 301(a) of the CWA, 33 U.S.C. § 1311(a) prohibits the discharge of any pollutant except in compliance with the CWA.

117. Oil and/or untreated contaminated groundwater and other hydrocarbon products were observed leaching from a bluff at the St. Paul Park facility into Pond 3 without going through the entire treatment process during an inspection conducted by EPA in 1997. Such discharge is not authorized by the Minnesota Permit and constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

118. The allegations presented above establish violations of Ashland's NPDES permits, the CWA, and state and federal regulations. Ashland is subject to penalties not to exceed \$25,000 per day for each violation. 33 U.S.C. § 1319(d). For violations which occurred after January 30, 1997, Ashland is subject to a civil penalty not to exceed \$27,500 per day per violation. 28 U.S.C. § 2461; 40 C.F.R. Part 19. Further, Ashland is subject to injunctive relief. 33 U.S.C. § 1319(b).

#### **THE RESOURCE CONSERVATION AND RECOVERY ACT - STATUTORY AND REGULATORY BACKGROUND**

##### **STATE AUTHORIZED PROGRAMS**

119. The Resource Conservation and Recovery Act ("RCRA") and its amendments established a comprehensive regulatory program for generators of hazardous waste and for the management of facilities that treat, store, or dispose of hazardous waste. EPA, pursuant to authority granted by RCRA, has promulgated regulations applicable to such generators and such hazardous



waste management facilities. Such regulations are set forth at 40 C.F.R. Parts 260-271.

120. Section 3006 of RCRA, 42 U.S.C. § 6926, provides that states may be authorized to administer and enforce hazardous waste management programs under RCRA. To the extent that the state hazardous waste program is authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the requirements of the state program are in effect in lieu of the federal hazardous waste management program set forth in 40 C.F.R. Part 260, et seq.

121. Ohio has promulgated hazardous waste management regulations in Title 3745 of the Ohio Administrative Code ("OAC"), chapters 3745-50 through 3745-69, and received authorization from EPA on June 30, 1989, to administer various aspects of the hazardous waste management program within Ohio. 54 Fed. Reg. 27170 (1989); 40 C.F.R. § 272.1800.

122. Under Rule 3745-51-03 of the OAC, a waste is determined to be a hazardous waste if it exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity (a "characteristic hazardous waste"), or if the waste is otherwise listed in the regulations as hazardous (a "listed hazardous waste").

123. Generators of hazardous waste are subject to the regulations codified at OAC Rule 3745-52-10 through 3745-52-70. From at least 1980 to the present, Ashland has generated at its Canton, Ohio, facility both "listed" and "characteristic" hazardous wastes within the meaning of OAC Rule 3745-51-03 and 40 C.F.R. Part 261, including, without limitation, hazardous wastes

with the following hazardous waste alphanumeric designations: D002, D003, D018, K048, K049, K050, and K051. Ashland is therefore subject to the regulations applicable to generators of hazardous waste set forth in OAC Rules 3745-52-10 through 3745-52-70.

124. Pursuant to OAC Rule 3745-52-34(A), generators of hazardous waste are authorized to accumulate hazardous waste for up to 90 days at the site of generation without a permit or interim status, provided that such generators comply with certain standards applicable to Treatment Storage and Disposal ("TSD") facilities, including, inter alia:

OAC Rule 3745-52-34(A) (3) (regarding labeling each tank with the words "hazardous waste");

OAC Rule 3745-66-92 (A), (D), and (G): (relating to integrity assessment of tanks used for treatment or storage of hazardous waste prior to placing such tank system in use, and certification of such assessment), and;

OAC Rule 3745-66-95(A) (relating to inspection of tanks used to treat or store hazardous waste) and 3745-66-95(C) (relating to documenting such inspections in the facility records).

125. Kentucky has promulgated hazardous waste management regulations in Title 401 of the Kentucky Administrative Regulations ("KAR"), chapters 31 through 40, and received authorization from EPA on January 1, 1985, to administer various aspects of the hazardous waste management program within Kentucky. 50 Fed. Reg. 2550 (1985); 40 C.F.R. § 272.900.

126. Under 401 KAR 31:030, a waste is determined to be a hazardous waste if it exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity (a "characteristic hazardous waste"), or if the waste is otherwise listed in the regulations at 401 KAR 31:040 as hazardous (a "listed hazardous waste").

127. Pursuant to Kentucky regulation, generators of hazardous waste are subject to the regulations codified at 401 KAR 32:010 through 32:100.

128. From at least 1980 to the present, Ashland has generated at its Catlettsburg, Kentucky, facility both "listed" and "characteristic" hazardous wastes within the meaning of Kentucky Administrative Regulations ("KAR"), 401 KAR 31:030 and 401 KAR 31:040, and 40 C.F.R. Part 261, including, without limitation, hazardous wastes with the following hazardous waste alphanumeric designations: D002, D003, D018, K048, K049, K050, and K051. Ashland is therefore subject to the regulations applicable to generators of hazardous waste set forth in 401 KAR 32:010 through 32:100.

129. Pursuant to 401 KAR 32:030(5)(1), generators of hazardous waste are authorized to accumulate hazardous waste for up to 90 days at the site of generation without a permit or interim status, provided that such generators comply with certain standards applicable to Treatment Storage and Disposal ("TSD") facilities, including, inter alia:

401 KAR 32:030(5)(1)(c) (regarding labeling each container and tank with the words "Hazardous Waste"); and

401 KAR 32:030(5)(1)(b) (requiring marking the accumulation start date on hazardous waste containers).

130. Minnesota has promulgated hazardous waste management regulations in Minnesota Rules, Chapter 7045, and received authorization from EPA on February 11, 1985, to administer various aspects of the hazardous waste management program within Minnesota. 50 Fed. Reg. 3756 (1985); 40 C.F.R. § 272.1201

131. Under Minn. R. 7045.0131, a waste is determined to be a hazardous waste if it exhibits the characteristic of ignitability, corrosivity, reactivity, or toxicity (a "characteristic hazardous waste"), or if the waste is otherwise listed in the regulations at Minn. R. 7045.0135 as hazardous (a "listed hazardous waste").

132. Generators of hazardous waste are subject to the regulations codified at Minn. R. 7045.0205 through 7045.0320.

133. From at least 1980 to the present, Ashland has generated at its St. Paul Park, Minnesota, facility both "listed" and "characteristic" hazardous wastes within the meaning of Minn. R. 7045.0135 and 7045.0131 and 40 C.F.R. Part 261, including, without limitation, hazardous wastes with the following hazardous waste alphanumeric designations: D001, D002, D006, D008, D009, D018, D039, K048, K049, K050, K051, F032, and F037. Ashland is therefore subject to the regulations applicable to generators of hazardous waste set forth in Minn. R. 7045.0205 through 7045.0320.

134. Pursuant to Minn. R. 7045.0292, generators of hazardous waste are authorized to accumulate hazardous waste for

up to 90 days at the site of generation without a permit or interim status, provided that such generators comply with certain standards applicable to TSD facilities, including, inter alia:

Minn. R. 7045.0292, Subp. (1)(H) (regarding labeling each tank with the words "Hazardous Waste"); and

Minn. R. 7045.0292, Subp. (1)(A) (requiring treatment or off-site shipment of wastes within 90 days of the accumulation start date).

#### FEDERAL ENFORCEMENT OF STATE AUTHORIZED PROGRAMS

135. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the United States is authorized, upon notification to the appropriate state, to enforce the regulations which comprise the federally approved state hazardous waste management program.

136. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that when any person has violated or is in violation of any requirement of RCRA, including provisions of a federally approved state hazardous waste management program, the Administrator of EPA may commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

#### THIRD CLAIM FOR RELIEF

##### RCRA VIOLATIONS

137. The allegations made in paragraphs 1-9 and 119-136 are repeated herein by reference.

##### THE CANTON FACILITY

##### *Failure to Maintain an Up-to-Date Contingency Plan*

138. Ohio Administrative Code ("OAC") Rule 3745-65-52 requires the owner or operator of a facility treating, storing,

or disposing of hazardous waste to maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents.

139. OAC Rule 3745-65-52(E) specifies certain information that must be included in such a contingency plan, including an up-to-date list of names, addresses, and phone numbers of persons qualified to act as emergency coordinators, an up-to-date list of all emergency equipment at the facility, and for each item of emergency equipment, its location, physical description, and an outline of its capabilities.

140. It was determined during an inspection conducted by EPA in September 1996, that Ashland failed to maintain a contingency plan for the Canton facility that included all of the information specified in OAC Rule 3745-65-52. Further, no emergency equipment was located at certain locations specified in the plan and spill equipment was not maintained at the wastewater treatment plant filter building as per the facility plan. Such actions and omissions violated 40 C.F.R. § 265.52(e) and OAC Rule 3745-65-52.

*Failure to Include Certain Hazardous Waste in  
Annual Report*

141. OAC Rule 3745-52-41(B) requires any generator who treats, stores, or disposes of hazardous waste on-site to submit an annual report covering those wastes in accordance with applicable rules pertaining to permitted and interim status facilities.

142. Ashland failed to report wastewater that was treated at the Canton facility's wastewater treatment plant ("WWTP") in the company's annual reports for 1993 and 1995. Only some of the waste treated at the Canton WWTP was reported in 1994. Such actions and omissions violated OAC 3745-52-41(B).

*Failure to Provide Complete Notifications of Land-Restricted Wastes*

143. OAC Rule 3745-59-07(A)(1) requires generators of waste restricted from land disposal under Chapter 3745-59, when shipping such waste off-site, to send to the Treatment Storage and Disposal ("TSD") facility receiving the waste a written notice that includes the following information: the EPA hazardous waste number; the appropriate treatment standards; the manifest number associated with the shipment of waste; and waste analysis data. The generator must retain on-site a copy of all such notifications as specified in the regulation. OAC Rule 3745-59-07(A)(6).

144. On at least three occasions in 1994, Ashland, when shipping waste off-site that is restricted from land disposal under Chapter 3745-59, failed to include in written notifications to the TSD that it prepared, all of the information required by the regulation.

145. These acts and omissions constitute violations of state and federal regulations and RCRA. OAC Rule 3745-59-07(A)(1); 40 C.F.R. § 268.7; 42 U.S.C. § 6928.

*Failure to Timely Notify State of Existence of UST*

146. Owners and operators of Underground Storage Tank

("UST") systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602), of the existence of such UST unless notice was given pursuant to Section 103(c) of the Comprehensive Environmental Response Compensation, and Liability Act, 42 U.S.C. § 9603(c). OAC Rule 1301:7-9-04(B).

147. OAC Rule 1301:7-9-04(B) requires that as of October 1990, owners of underground storage tank systems either in use or improperly taken out of service must submit an annual registration application with the local fire marshal.

148. From an unknown date until February 1994, Ashland failed to notify the state or register with the fire marshal tank no. 10 located at the Canton facility. When Ashland did notify the state, the age of the tank was listed as "unknown."

149. These acts or omissions violate state and federal regulations and RCRA. OAC Rule 1301:7-9-04(B); 40 C.F.R. § 280.22; 42 U.S.C. § 6928.

#### THE CATLETTSBURG FACILITY

##### *Improper Treatment Relating to Failure to Properly Manage Containers of Hazardous Waste*

150. Both Kentucky and federal law prohibit the operation of a treatment, storage or disposal ("TSD") facility except in accordance with a permit issued pursuant to RCRA, unless the facility has interim status. KRS 224.866 and 401 KAR 38:010(1);



42 U.S.C. § 6924(a) and (e).

151. The Catlettsburg facility does not have a TSD permit or interim status.

152. Kentucky regulation requires that generators who accumulate waste in a less-than-90-day accumulation area must comply with 401 KAR 35:180. 401 KAR 32:030(5)(1)(a). The regulations further require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 401 KAR 35:180(4)(1).

153. At the Catlettsburg facility, from approximately October 17, 1996 to November 7, 1996, after dewatering its API separators, Ashland pumped the remaining sludge, a RCRA hazardous waste, into roll-off containers, then heated the sludge with steam to make it less viscous, allowing wood chips to be mixed in to absorb free liquids and make the material more homogeneous. During the steam heating, two roll-offs were not covered, and vapors were being released to the environment.

154. These actions and omissions violated state regulations and state and federal statutes. 401 KAR 32:030 and 401 KAR 35:180(4)(1); KRS 224.866; 42 U.S.C. § 6924(a) and (e).

*Failure to Mark Accumulation Start Date*

155. Kentucky regulations require generators who accumulate hazardous waste in a less-than-90-day accumulation area to clearly mark the date upon which each period of accumulation began. 401 KAR 32:030(5)(1)(b).

156. During its October 29 - November 8, 1996 inspection of the Catlettsburg facility, EPA observed one drum of Lab 65 waste

soil samples (waste codes F001 and F002) which was not marked with an accumulation start date.

157. The failure to properly mark the drum violates state and federal regulations and RCRA. 401 KAR 32:030(5)(1)(b); 40 C.F.R. § 262.34(a)(2); 42 U.S.C. § 6928.

*Failure to Label "Hazardous Waste" Containers*

158. Kentucky regulations require generators who accumulate hazardous waste in containers on site in a less-than-90-day accumulation area to clearly label each container with the words "Hazardous Waste". 401 KAR 32:030(5)(1)(c).

159. During the October - November, 1996 inspection of the Catlettsburg facility, EPA inspectors observed that hazardous waste accumulation tanks 709 and 717 at the AKJ Area, and a tank at the RAD laboratory were not marked with the words "Hazardous Waste."

160. During EPA's October - November, 1996 inspection of the Catlettsburg facility, four containers of hazardous wastes (F-listed waste solvents, except F004) accumulating at the RAD laboratory were observed to be missing the label "Hazardous Waste."

161. The failure to clearly mark these containers and tanks with the words "Hazardous Waste" violated state and federal regulations and RCRA. 401 KAR 32:030(5)(1)(c); 40 C.F.R. § 262.34(a)(3); 42 U.S.C. § 6928.

*Failure to Properly Manage Containers of Hazardous Waste: satellite accumulation areas*

162. State regulations require that generators who

accumulate waste in containers at or near the point of generation must comply with Sections 2, 3, and 4(1) of 401 KAR 35:180. 401 KAR 32:030(5)(3)(a)(1). Kentucky and federal regulations further require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. 401 KAR 35:180(4)(1); 40 C.F.R. § 265.173(a).

163. During the October - November, 1996 inspection of the Catlettsburg facility, EPA inspectors observed a drum of lead abatement paint waste (waste code D008) at the Union Boiler safety office and four containers of hazardous wastes at the RAD laboratory (F-list waste solvents, except F004), all of which were not closed during accumulation.

164. These actions and omissions violate state and federal regulations and RCRA. 401 KAR 32:030(5)(3)(a)(1); 401 KAR 35:180(4)(1); 40 C.F.R. § 265.173(a); 42 U.S.C. § 6928.

*Failure to Provide Complete Notifications of  
Land-Restricted Wastes*

165. Federal regulation requires that generators of waste restricted from land disposal under 401 KAR Chapter 37, when shipping such waste off-site, to send to the TSD facility receiving the waste a written notice that includes the following information: 1) the EPA hazardous waste number; 2) the treatment standards for the waste and whether the waste is a non-wastewater or wastewater; 3) the manifest number associated with the shipment of waste; and 4) waste analysis data. 40 C.F.R. § 268.7(a)(4).

166. Ashland failed to identify on a land disposal

restriction ("LDR") notification accompanying a January 18, 1995 shipment of API separator sludge (waste code K051) all information required by 40 C.F.R. § 268.7(a)(4).

167. Ashland failed to include the manifest number (07713) associated with a May 29, 1996 shipment of hazardous waste.

168. Ashland identified an incorrect manifest number (AR-243292) on the LDR notification accompanying an October 24, 1996 shipment of hazardous waste (manifest number AR-243282).

169. Ashland's failures to include the proper information in these shipments of hazardous waste violated 40 C.F.R. § 268.7(a)(4) and 42 U.S.C. § 6928.

*Failure to Identify Method of Treatment and to Report Certain Waste Streams in Annual Report*

170. Kentucky regulations require generators who ship hazardous wastes off-site, or who treat, store, or dispose of hazardous wastes on-site to submit an annual report covering those wastes on a form approved by the state and according to instructions on the form. 401 KAR 32:040(2).

171. In its 1993, 1994, and 1995 annual reports, Ashland failed to identify two treatment methods: 1) the neutralization process used to treat hydrofluoric acid (D002); and 2) the wastewater treatment plant used to treat wastewater contaminated with benzene (D018).

172. Ashland further failed to report its generation of the DAF float and waste waters contaminated with benzene.

173. Ashland's failure to include this information in its biannual reports violated state and federal regulation and RCRA.

401 KAR 32:040(2); 40 C.F.R. § 262.41(b); 42 U.S.C. § 6928.

#### *Improper Waste Determination*

174. Kentucky and federal regulations require any person who generates a waste in Kentucky to evaluate the waste to determine if it is hazardous. 401 KAR 32:010(2); 40 C.F.R. § 262.11 (c). The person must determine if the waste is "listed" under 401 KAR 31:040 or if it is "characteristic" under 401 KAR 31:030 by either testing the waste according to methods set forth in 401 KAR 31:030 (referencing 401 KAR 31:110), or by using knowledge of the hazardous characteristic of the waste in light of the material or process used.

175. Kentucky regulation requires that EPA's Method 1311 is the required test method for making such a determination, unless an equivalent method is approved by the state. 401 KAR 31:110.

176. Solid waste exhibits the characteristic of toxicity, and is therefore a hazardous waste, if using the Toxicity Characteristic Leaching Procedure ("TCLP"), test method 1311, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 C.F.R. § 261.24 at a level equal to or greater than indicated in the table.

177. EPA Method 1311 specifies, in part, that: 1) "[i]f impurities are found or the pH is not within the above specifications [for extraction fluid #1:  $4.93 \pm 0.05$  pH units; and for extraction fluid #2:  $2.88 \pm 0.05$  pH units], the fluid shall be discarded and fresh extraction fluid prepared."; 2) a minimum sample weight of 100 grams must be used when performing the TCLP; 3) during the extraction procedure, the temperature

must be maintained at  $23 \pm 2$  °C (70 to 77 °F); and 4) the collection of extract from certain apparatuses (zero-headspace or ZHE apparatuses) must be collected in a Tedlar® bag or a 600 mL gas-tight syringe.

178. During 1996, Ashland failed on numerous occasions to comply with 40 C.F.R. § 261.24 and 401 KAR 31:110 by: 1) routinely adjusting the pH of the extraction fluid by the addition of acids or bases, rather than discarding the sample and obtaining fresh extract; 2) testing samples below the minimum weight of 100 grams; 3) conducting the extraction procedure when the temperature exceeded 77 °F, and; 4) collecting ZHE extracts in 50 mL gas-tight syringes. All of these actions resulted in underestimation of the toxicity characteristic of the samples tested.

179. Because Ashland failed to properly conduct the TCLP tests, Ashland conducted improper waste determinations in violation of state and federal regulation and RCRA. 401 KAR 32:010; 40 C.F.R. § 262.11(c); 42 U.S.C. § 6928.

#### THE ST. PAUL PARK FACILITY

##### *Accumulation of Hazardous Waste for More Than 90 Days Without a Permit or Interim Status*

180. Minnesota regulation, Minn. R. 7045.0292, Subp. 1(A), provides that a generator may accumulate hazardous waste on site without a permit or without having interim status if within 90 days of the accumulation start date, such waste is treated on site or shipped off site in accordance with the applicable regulations.

181. From August 28, 1994 to January 9, 1995 (144 days), Ashland stored sandblast sand contaminated with lead, a hazardous waste (D008), without a permit or interim status.

182. Additionally, from March 15, 1994 to July 25, 1994 (132 days), Ashland stored approximately three 55-gallon drums containing gasoline filters, a hazardous waste (D018), without a permit or interim status.

183. These actions constitute violations of state and federal regulations and RCRA. Minn. R. 7045.0292, Subp. 1(A); 40 C.F.R. § 271.1(i)(1); 42 U.S.C. § 6925.

*Failure to Label "Hazardous Waste" Containers*

184. Minnesota regulation, Minn. R. 7045.0292, Subp. 1(F), requires that a generator who accumulates hazardous waste in a container on site in a less-than-90-day accumulation area must label each container clearly with the words "Hazardous Waste" and a description that clearly identifies their contents. Minn. R. 7045.0292, Subp. 1(C) requires also that the accumulation start date must be identified on such containers.

185. During EPA's September 23 - October 4, 1996 inspection of the St. Paul Park facility, three drums labeled "gasoline filters" (waste code D018), one sack of spent activated carbon contaminated with F027 wastes, and two drums of F027 wastes, all of which are hazardous wastes, were observed without labels or markings with the words "Hazardous Waste."

186. Additionally, the accumulation start date was missing from the F027 waste containers.

187. These actions constitute violations of state and

federal regulations and RCRA. Minn. R. 7045.0292, Subp. 1(C); Minn. R. 7045.0292, Subp. 1(F); 40 C.F.R. § 262.34; 42 U.S.C. § 6928.

*Failure to Properly Complete Manifests*

188. A generator who transports or offers for transportation hazardous waste for off-site treatment, storage, or disposal must provide certain information in the shipping manifest. Minn. R. 7045.0261, Subp. 7; 40 C.F.R. Part 262, Appendix. One item of information that must be provided in the manifest is the date upon which the generator signed the required certification. Another is the proper U.S. Department of Transportation description of the waste. 40 C.F.R. Part 262, Appendix.

189. Ashland manifests corresponding to two shipments of hazardous wastes (12/4/95 and 7/23/96) did not include a date with the generator's certification. Additionally, a July 25, 1994 shipment of gasoline filters (D018) was incorrectly manifested as K050 (heat exchanger bundle cleaning sludge).

190. These actions constitute violations of state and federal regulations and RCRA. Minn. R. 7045.0261, Subp. 7; 40 C.F.R. §§ 262.20 and 262.23; 42 U.S.C. § 6928.

*Failure to Provide Complete Notifications of Land-Restricted Wastes*

191. Minnesota regulation, Minn. R. 7045.1315, requires generators of waste restricted from land disposal under Minn. R. 7045.1300 through 7045.1380, when shipping such waste off-site, to send to the TSD facility receiving the waste a written notice



that includes the following information: the EPA hazardous waste number; the appropriate treatment standards; the manifest number associated with the shipment of waste; and waste analysis data.

192. On at least two occasions in 1995, Ashland, when shipping waste off-site that is restricted from land disposal under Minn. R. 7045.1300 through 7045.1380, failed to include in notifications that it prepared, all of the information required by the regulation (the corresponding manifest numbers).

193. These actions constitute violations of state and federal regulations and RCRA. Minn. R. 7045.1315; 40 C.F.R. Part 262; 40 U.S.C. § 6928.

*Failure to Properly Manage Storage Containers of Hazardous Waste*

194. Minnesota regulation, Minn. R. 7045.0626, Subp. 4, requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

195. During EPA's September - October 1996 inspection of the St. Paul Park facility, inspectors observed one open sack of spent activated carbon contaminated with F027 wastes and one open 55-gallon drum used for API separator sludge (F037). In neither case was it necessary to add or remove wastes at the time the receptacles were not closed.

196. These actions constitute violations of state and federal regulations and RCRA. Minn. R. 7045.0626, Subp. 4; 40 C.F.R. § 265.173; 42 U.S.C. § 6928.

*Failure to Document Weekly Inspections of*

### *Containers*

197. Minnesota regulations, Minn.R. 7045.0294, Subp. 2a and Minn. R. 7045.0626, Subp. 5, require a generator of hazardous waste who accumulates such in a less-than-90-day accumulation area to conduct weekly inspections of such containers and to keep a copy of each weekly container inspection report for a period of at least three years from the date of the inspection.

198. Ashland's inspection log showed approximately six instances between June 10, 1994 and July 7, 1995 where weekly inspections of hazardous waste containers had not been documented.

199. The failures to properly document such inspections constitute violations of state and federal regulations and RCRA. Minn.R. 7045.0294, Subp. 2a; Minn. R. 7045.0626, Subp. 5; 40 C.F.R. § 265.174.

### *Failure to Include Certain Hazardous Wastes in Biennial Report*

200. Federal regulations require any generator who treats, stores, or disposes of hazardous waste on-site to submit a Biennial Report on EPA Form 8700-13A covering those wastes, including a description and the quantity of each hazardous waste the facility treated, disposed of or stored during the year. 40 C.F.R. §§ 262.41(b) and 265.75(d).

201. In its 1993 and 1995 Biennial Reports, Ashland failed to report the hydrofluoric acid generated at the HF alkylation (D002) unit.

202. Also, in its 1995 report, Ashland failed to report

process wastewater with benzene concentrations of greater than .5 ppm (D018) that was treated in the wastewater treatment plant.

203. These failures to properly report constitute violations of federal regulations and RCRA. 40 C.F.R. §§ 262.41(b) and 265.75(d); 42 U.S.C. § 6928.

*Failure to Identify the Method of Treatment in the Annual Report*

204. Federal regulations require that any generator who treats, stores, or disposes of hazardous waste on-site to submit a Biennial Report which identifies the method of treatment, storage, or disposal for each hazardous waste. 40 C.F.R. §§ 262.41(b) and 265.75(e).

205. Ashland failed to describe the neutralization process used to treat the waste hydrofluoric acid generated at the HF alkylation (D002) unit in its 1993 and 1995 Annual Reports.

206. Additionally, in its 1995 report, Ashland failed to describe the wastewater treatment plant used to treat wastewater contaminated with benzene (D018).

207. These failures to report constitute violations of federal regulations and RCRA. 40 C.F.R. §§ 262.41(b) and 265.75(e); 42 U.S.C. § 6928.

*Failure to Properly Conduct Waste Determination*

208. Minnesota regulation, Minn. R. 7045.0214, requires any person producing a waste in Minnesota to evaluate the waste to determine if it is hazardous. The person must determine if the waste is a "listed" waste under Minn. R. 7045.0135 or if it is a "characteristic" waste under Minn. R. 7045.0131 by either testing

the waste or using knowledge of the hazardous characteristics of the waste in light of the materials or processes used. Minn. R. 7045.0214.

209. Ashland conducted an improper waste determination of filter cake that resulted from the remediation of two surface impoundments located at the St. Paul Park facility in 1994. Test results for analysis done on March 4, 1994 revealed levels of benzene and chromium above the regulatory level. Nonetheless, Ashland sent these wastes to a non-hazardous landfill. Eight roll-off boxes of filter cake that Ashland had determined to be non-hazardous were rejected by the receiving facility due to high levels of benzene. Subsequent shipment of the waste as a hazardous waste did not identify the chromium (D007) as a characteristic waste.

210. These actions constitute violations of state and federal regulations and RCRA. Minn. R. 7045.0214; 40 C.F.R. § 262.11; 42 U.S.C. § 6928.

*Treatment of a Hazardous Waste Without a Permit or Having Interim Status*

211. Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6924(a) and (e), and Minn. R. 7001.0520, prohibit the operation of a treatment, storage or disposal facility except in accordance with a permit issued pursuant to RCRA, unless the facility has interim status.

212. The St. Paul Park facility does not have interim status.

213. On March 18, 1994, gasoline filters generated at the

St. Paul Park facility were sampled for a waste determination. The test results showed the filters to be hazardous because they contained benzene (D018) and were ignitable (D001). Those particular filters were handled as hazardous waste. Subsequently, however, Ashland failed to handle similar filters in accordance with hazardous waste regulations. Ashland placed filters in open drums, then transported the drums to the less-than-90-day accumulation area in an open truck. In transit, the volatile benzene evaporated rendering the waste non-hazardous.

214. "Treatment" is defined under RCRA as "any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous." 42 U.S.C. § 6903(34). The regulatory definition of "treatment" extends the statutory definition to energy or resource recovery. 40 C.F.R. § 260.10.

215. Ashland's treatment of the gasoline filters constitute violations of state regulation and RCRA. Minn. R. 7001.0520; 42 U.S.C. §§ 6924(a) and (e) and 6928.

216. The allegations presented above evidence violations of RCRA, regulations promulgated pursuant to RCRA, and state regulations and permits which subject Ashland to penalties and

injunctive claims.

217. RCRA provides that persons who violate the Act or regulations governed by the Act are liable for a civil penalty in an amount not to exceed \$25,000 for each day of each violation. 42 U.S.C. § 6928(g). For violations which occur after January 30, 1997, violators are subject to penalties of up to \$27,500 for each day of each violation. 28 U.S.C. § 2461; 40 C.F.R. Part 19. Further, violators are subject to claims for injunctive relief. 42 U.S.C. § 6928(a)(1).

**EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT - STATUTORY AND REGULATORY BACKGROUND**

218. Section 304(a)(1) of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004(a)(1), provides that if a release of an extremely hazardous substance listed pursuant to Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), the owner or operator of the facility shall immediately provide notice as required in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b).

219. Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), provides that notice shall be given immediately to the community emergency coordinator for the local emergency planning committee ("LEPC") for any area likely to be affected by the release and to the state emergency response commission ("SERC") of any state likely to be affected by the release.

220. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c),

provides that as soon as practicable after a release which requires notice pursuant to Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), such owner or operator shall provide a written follow-up emergency notice setting forth and updating the information and providing additional information.

221. Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and regulations set forth at 40 C.F.R. § 372.30, require the owner or operator of a covered facility to complete and submit to the Administrator of EPA and to the state in which the subject facility is located, a toxic chemical release inventory form ("Form R") for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year

222. Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and the regulations set forth at 40 C.F.R. § 372.22, provide that the requirements of Section 313(a) of EPCRA apply to facilities which have 10 or more full-time employees, have a Standard Industrial Classification ("SIC") Code of 20 through 39 and which manufactured, processed or otherwise used, during the relevant calendar year, a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25.

223. Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, provide that the reporting threshold amount for toxic chemicals manufactured or processed at a facility is 25,000 pounds for calendar years subsequent to and including 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years subsequent to and including 1987. A facility covered by 313(a) of EPCRA, 42 U.S.C. § 11023, must report all information required by Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and 40 C.F.R. § 372.85 on an EPA Form R, including information on transfers of toxic chemicals to off-site locations.

224. Pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), Pub. L. 104-134 and 61 Fed. Reg. 69360, the Administrator may bring an action to assess and collect a penalty of not more than \$25,000 per day for each day during which a violation of Section 304 of EPCRA continued before January 30, 1997 and of not more than \$27,500 per day for each day during which a violation of Section 304 continued on or after January 30, 1997. In the case of a second or subsequent violation, the amount of the penalty shall be not more than \$75,000 per day for each day during which a violation of Section 304 of EPCRA continued before January 30, 1997 and of not more than \$82,500 per day for each day during which a violation of Section 304 continued on or after January 30, 1997.

225. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Pub. L. 104-134 and 61 Fed. Reg. 69360, the Administrator may bring an action in United States District Court to assess and collect civil penalties in an amount not to exceed \$25,000 for each day that a violation of Section 312 or 323 of EPCRA continued before January 30, 1997 and in an amount not to exceed \$27,500 for each day that a violation of Section 312 or 323 of EPCRA continues on or after January 30, 1997.

#### FOURTH CLAIM FOR RELIEF

##### EPCRA VIOLATIONS

##### THE CATLETTSBURG FACILITY

226. At all times relevant to this matter, Ashland's Catlettsburg facility had 10 or more "full-time employees" as that term is defined by 40 C.F.R. § 372.3. The facility is in Standard Industrial Classification "29," Petroleum Refining.



### *Emergency Release Notification*

227. Between March 24, 1994, and December 21, 1995, Ashland released SO<sub>2</sub> from its Catlettsburg facility in excess of the RQ of 500 pounds/day over permitted levels, on at least 5 separate occasions.

228. None of these releases was a "federally permitted release" under Section 101(10) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(10).

229. Ashland failed to provide a written follow-up notice to the Kentucky State Emergency Response Commission (SERC) and the West Virginia SERC as soon as practicable, but no later than 10 days from the date of release, for any of the five releases.

230. Each of these releases of SO<sub>2</sub> in excess of the RQ without written follow-up notice to the Kentucky and West Virginia SERCs constitutes a separate violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), 40 C.F.R. § 355.40. The releases which occurred in 1995, also violated the May 1994 Consent Agreement and Consent Order between Ashland and EPA. Hence, each of these violations is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

### *Reporting Requirements*

231. During 1992, release information provided by Ashland on its Form R for the Catlettsburg facility was not complete and was not based upon reasonable estimates. Ethylene, propylene, and 1,3-butadiene water releases were not reported for 1992.

232. Unanticipated malfunctions and accidental/non-routine spills and releases at the Catlettsburg facility were not

included in Ashland's total releases for its 1994 and 1995 Form R's. In 1995, approximately 17,280 pounds of ethylene, propylene, benzene, cyclohexane, toluene, ethylbenzene, cumene, 1,2,4-trimethylbenzene, xylene, naphthalene, n-hexane, and sulfuric acid were released into the environment.

233. These releases violated Ashland's reporting requirements under EPCRA Section 313, 42 U.S.C. § 11023 and 40 C.F.R. Part 372, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

#### ST. PAUL PARK

234. Between September 27, 1995, and August 6, 1996, Ashland released NO<sub>2</sub>, SO<sub>2</sub>, and H<sub>2</sub>S from its St. Paul Park facility in excess of the RQ for these substances on at least 12 separate occasions.

235. None of these releases was a "federally permitted release" under Section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601(10).

236. Ashland failed to provide a written follow-up notice to the Minnesota State Emergency Response Commission (SERC) as soon as practicable, but no later than 10 days from the date of release, for any of the releases.

237. Each of these releases was in excess of the RQ without written follow-up notice to the Minnesota SERC constitutes a separate violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), 40 C.F.R. § 355.40. Hence, each of these violations is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

RELIEF REQUESTED

WHEREFORE, Plaintiff, United States of America, prays for the following relief:

1. For a civil penalty of not more than \$25,000 per day for each day Ashland violated the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act, and the Toxic Substances Control Act prior to January 30, 1997;

2. For a civil penalty of not more than \$27,500 per day for each day Ashland violated the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Emergency Planning and Community Right-to-Know Act, subsequent to January 30, 1997;

3. For a permanent injunction ordering Ashland to comply with the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Emergency Planning and Community Right-to-Know Act;

4. For costs and disbursements incurred herein; and

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5. For such other and further relief that the Court deems just and necessary.

Respectfully submitted,

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